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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/672,009	09/26/2003	Laurent Schaller	P0022022.00	7654
77218	7590	12/10/2009	EXAMINER	
Medtronic CardioVascular Mounds View Facility South 8200 Coral Sea Street N.E. Mounds View, MN 55112			NGUYEN, TUAN VAN	
			ART UNIT	PAPER NUMBER
			3731	
			NOTIFICATION DATE	DELIVERY MODE
			12/10/2009	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

rs.vasciplegal@medtronic.com

Office Action Summary	Application No. 10/672,009	Applicant(s) SCHALLER ET AL.	
	Examiner TUAN V. NGUYEN	Art Unit 3731	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 September 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 and 19-40 is/are pending in the application.
- 4a) Of the above claim(s) 34-40 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-17 and 19-33 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>9/14/09</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Claims 1-17 and 19-40 are pending, claims 1-17 and 19-33 are presented for examination and claims 34-40 have been withdrawn. Claims 1-17 and 19-33 were examined and rejected in previous Office action.
2. This Office action is in response to the RCE filed on 09/14/2009.

Continued Examination Under 37 CFR 1.114

3. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after the final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 09/14/09 has been entered.

Response to Arguments

4. Applicant's arguments with respect to rejection of claims 1, 2, 6/1, 6/2, 7/1, 7/2, 8, 14/8, 15/8, 16/8, and 17-28 under 35 USC 102(e) as being anticipated by Edoga have been fully considered but they are moot in view of new ground of rejection.
5. Applicant's arguments with respect to rejection of claims 31-33 under 35 USC 102(e) as being anticipated by Edoga have been fully considered but they are not persuasive. Applicant argues that Edoga fails to disclose a first position where the

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distal end portions are inside said support structure to a second position where the distal end portions extend from said support structure is incorrect. Figure 5 of Edoga's drawings shows the barbs extended out from the outer surface of the housing filler 130 or support member. Figure 4 of Edoga's drawings shows the barbs retracted inside of the housing filler 130 or support member, with respect to the outer surface of housing filler 130 or support member

6. Applicant's arguments with respect to rejection of claims 1-17 and 19-33 under 35 USC 103(a) as unpatentable over Miller in view of Loshakove have been fully considered but they are moot in view of new ground of rejection.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

8. **Claims 31-33 are rejected under 35 U.S.C. 102(e) as being anticipated by Edoga et al. (US 7335212).**
9. Edoga discloses (Figs. 2-7, and 16, col. 3, line 50 to col. 4, line 65 and col. 6, lines 14-40) an anastomosis device comprising: a support structure, which is the tubular structure that graft 110 is attached onto; a plurality of wire segment 134, which

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formed into self-closing clips 158, each clip being releasably coupled to the first plurality of members 132 and the support structure 130; a trigger 108 or a first plunger 108 movably coupled to the support structure, wherein the first plunger 108 includes plurality of pusher 138, each pusher coupled to a clip for simultaneously deployment of the clips; plurality of barbs 140 being coupled to the support structure, the barbs being separate and from the clips and each barbs slidably disposed in one second plurality of paths 141; and a second plunger 118 movably coupled to the support structure 130 and the second plunger being coupled to the proximal end of each barb 140 for simultaneously extending the barbs between a first position where they extend from the support structure (Fig. 5) and a second position where they are retracted into the support structure (Fig. 4). Noting that the wire segments 134 are movable independently of the guide tubes 140.

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

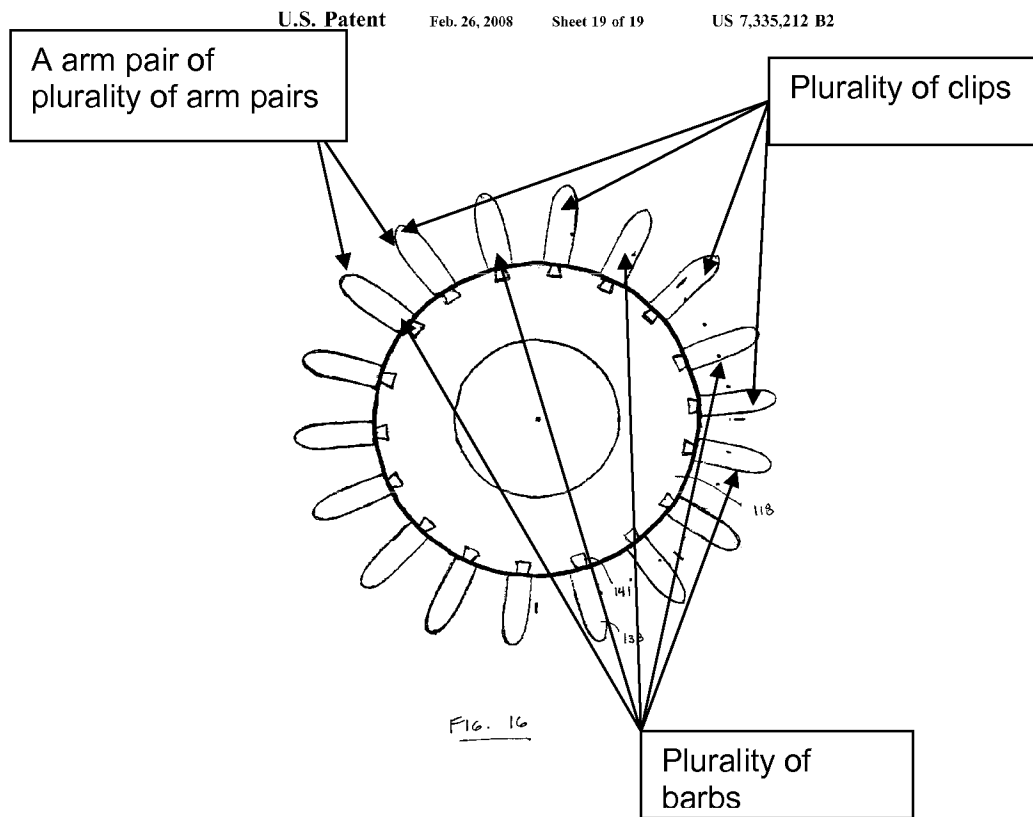
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11. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:
1. Determining the scope and contents of the prior art.
 2. Ascertaining the differences between the prior art and the claims at issue.
 3. Resolving the level of ordinary skill in the pertinent art.
 4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
12. **Claims 1-17 and 19-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Edoga et al. (US 7335212) in view of Miller et al. (U.S. 6,709,442).**
13. Edoga discloses (Figs. 2-7, and 16, col. 3, line 50 to col. 4, line 65 and col. 6, lines 14-40) an anastomosis device comprising: a support structure, which is the tubular structure that graft 110 is attached onto; a plurality of wire segment 134, which formed into closing clips 158, each clip being releasably coupled to the first plurality of members 132 and the support structure 130 (housing filler 130); a trigger 108 or a first plunger 108 movably coupled to the support structure, wherein the first plunger 108 includes plurality of pusher 138, each pusher coupled to a clip for simultaneously deployment of the clips; plurality of barbs 140 being coupled to the support structure, the barbs being separate and from the clips and each barbs slidably disposed in one second plurality of paths 141; and a second plunger 118 movably coupled to the support structure 101 and the second plunger being coupled to the proximal end of each barb 140 for simultaneously extending the barbs between a first position where they extend from the support structure

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130, with respect to the outer diameter of housing filler 130, (Fig. 5) and a second position where they are retracted into the support structure, with respect to the outer diameter of housing filler 130, (Fig. 4). Noting that the wire segments 134 are movable independently of the guide tubes 140. Edoga discloses the invention substantially as claimed except for the clip is self-closing clip.

14. However, Miller discloses (see Figs. 5A-5F) anastomosis device 50 comprising: a support structure and one or plurality of self-closing clip 10 slidably and disposed in tube 51, wherein the clips is shape memory clip and the clips assume a shape that automatically applies to the layers of tissue an appropriate hemostatic compression which is relatively independent of tissue thickness (see col. 3, lines 54-60). It would have been obvious to one of ordinary skill in the art to replace the clip as disclosed by Edoga with the clip as disclosed by Miller so that it too would have the same advantage.



Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to TUAN V. NGUYEN whose telephone number is (571)272-5962. The examiner can normally be reached on 9:30 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, AnhTuan Nguyen can be reached on 571-272-4963. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/T. V. N./
Examiner, Art Unit 3731

/Anhtuan T. Nguyen/
Supervisory Patent Examiner, Art Unit 3731
12/4/09